



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

SOUTHWEST REGIONAL OFFICE

355-A Deadmore Street, Abingdon, Virginia 24210

Phone (276) 676-4800 Fax (276) 676-4899

www.deq.virginia.gov

Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

Jeffrey Hurst
Regional Director

STATE WATER CONTROL BOARD

ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO

Cumberland Plateau Regional Housing Authority FOR

Hurley Heights 1 – Lots A, 1 and 2 Sewage Treatment Plant VPDES General Permit Registration No. VAG400502

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and the Cumberland Plateau Regional Housing Authority, regarding the Hurley Heights 1 – Lots A, 1 and 2 Sewage Treatment Plant, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. “305(b) report” means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters. The “303(d) report” is a subset of the “305(b) report”.
2. “Authority” or “CPRHA” means the Cumberland Plateau Regional Housing Authority, a political subdivision of the Commonwealth of Virginia. CPRHA is a “person” within the meaning of Va. Code § 62.1-44.3.
3. “Board” means the State Water Control Board, a permanent citizens’ board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
4. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

5. “Director” means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. “Discharge” means discharge of a pollutant. 9 VAC 25-31-10
7. “Discharge of a pollutant” when used with reference to the requirements of the VPDES permit program means:
 - (a) Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - (b) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
8. “DMR” means Discharge Monitoring Report.
9. “Effluent” means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
10. “Facility”, “Plant” or “STP” means the Hurley Heights 1 – Lots A, 1 and 2 package STP, located on State Route 650, near Roseann, Virginia, which treats and discharges treated sewage and other domestic wastes, for the residents of Hurley Heights, Lots A, 1 and 2.
11. “GPD” means gallons per day.
12. “Notice of Violation” or “NOV” means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
13. “O&M” means operations and maintenance.
14. “Order” means this document, also known as a “Consent Order” or “Order by Consent,” a type of Special Order under the State Water Control Law.
15. “Permit” means the VPDES General Permit for Domestic Sewage Discharges less than or equal to 1,000 GPD, which was reissued under the State Water Control Law and the Regulation on August 2, 2016 and which expires on August 1, 2021. The Authority is registered under the Permit and was issued Registration No. VAG400502 on August 2, 2016.
16. “Pollutant” means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.

17. “Pollution” means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are “pollution.” Va. Code § 62.1-44.3.
18. “Regulation” means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
19. “State Water Control Law” means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
20. “State waters” means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
21. “SWRO” means the Southwest Regional Office of DEQ, located in Abingdon, Virginia.
22. “TMDL” means Total Maximum Daily Load.
23. “Va. Code” means the Code of Virginia (1950), as amended.
24. “VAC” means the Virginia Administrative Code.
25. “VPDES” means Virginia Pollutant Discharge Elimination System.

SECTION C: Findings of Fact and Conclusions of Law

1. The Authority owns and operates the STP. The Permit allows the Authority to discharge treated sewage and other domestic wastes from the STP, to Lester Fork, in strict compliance with the terms and conditions of the Permit. The Permit allowed for connection of five houses to the STP. Three houses were constructed and connected.
2. Lester Fork is located in the Tennessee–Big Sandy River Basin, Big Sandy River Subbasin. It is classified as Section 3, Class IV, Special Standards: None. It has not been assessed for impairment(s). Lester Fork is included in the TMDL Report *Fecal Bacteria and General Standard Total Maximum Daily Load Development for Knox Creek and Pawpaw Creek*. The report was approved by EPA on March 27, 2007, but has not been approved by the State Water Control Board.

3. On January 18, 2017, DEQ conducted a Comprehensive Evaluation Inspection (CEI) of the Facility. The inspection report was mailed to the Authority on February 2, 2017.
4. At the time of the CEI, no maintenance contract was in effect for the Facility, nor had an exception to the requirement to have a maintenance contract been requested or granted.
5. The Permit at Part I B 2(b) states in part: “For existing treatment works, the permittee shall keep a maintenance contract in force during the permit term, unless an exception to the maintenance contract requirement has been requested and granted in accordance with Part I D 3. A copy of the maintenance contract... shall be kept at the site of the treatment works and made available to DEQ for examination upon request.”
6. At the time of the CEI, no power was being provided to the package STP. Mechanical aeration was not in operation. No chlorine tablets or dechlorination tablets were present within the respective feeder tubes.
7. The Permit at Part II Q states that “the permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also include effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures.”
8. At the time of the CEI, the discharge at Outfall 001 was gray in color and contained floating solids in more than a trace amount.
9. The Permit at Part I B 1 states that “there shall be no discharge of floating solids or visible foam in other than trace amounts”.
10. DEQ SWRO issued NOV No. W2017-03-S-0001 to the Authority on March 15, 2017 for the violations cited in Paragraphs C(4), (C)6 and (C)8 above.
11. The Authority responded to the NOV with an e-mail March 16, 2017, from a maintenance contractor hired by the Authority, stating that the blower motor had been replaced and that the package STP was now operational. The Authority provided a price quote for a maintenance contract for the Facility on April 6, 2017 and monitoring analysis results on May 8, 2017. The Executive Director of the Authority provided documentation identifying the Authority as a political subdivision of the Commonwealth by e-mail on March 28, 2017. The Authority, through its Executive Director, also provided DEQ with other regular status updates regarding this matter.
12. Va. Code § 62.1-44.5 states that: “[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances.”
13. The Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.

14. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
15. The Department has issued no permits or certificates to the Authority other than VPDES General Permit Registration No. VAG400502.
16. Lester Fork is a surface water located within the Commonwealth and is a “state water” under State Water Control Law.
17. Based on the results of the CEI on January 18, 2017, e-mail correspondence received on March 16, 2017 and April 6, 2017, and phone calls referenced above, the Board concludes that the Authority has violated the Permit, Va. Code § 62.1-44.5 and 9 VAC 25-31-50, by discharging untreated sewage and domestic wastes from the Facility while concurrently failing to comply with the conditions of the Permit, as described in paragraph C(4), C(6) and C(8), above.
18. In order for the Authority to complete its return to compliance, DEQ staff and representatives of the Authority have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders the Cumberland Plateau Regional Housing Authority and the Cumberland Plateau Regional Housing Authority agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$3,828.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier’s check payable to the “Treasurer of Virginia,” and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

The Cumberland Plateau Regional Housing Authority shall include its Federal Employer Identification Number (FEIN) with the civil charge payment **and** shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, the Cumberland Plateau Regional Housing Authority shall be liable for attorneys’ fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of the Authority for good cause shown by the Authority, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. W2017-03-S-0001, which was issued on March 15, 2017. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, the Authority admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. The Authority consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. The Authority declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by the Authority to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. The Authority shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. The Authority shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The Authority shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances

are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

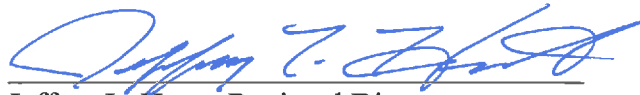
9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and the Authority. Nevertheless, the Authority agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after the Authority has completed all of the requirements of the Order;
 - b. the Authority petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to the Authority.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the Authority from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by the Authority and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of the Authority certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind the Authority to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of the Authority.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, the Authority voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 5th day of October, 2017.



Jeffrey L. Hurst, Regional Director
Department of Environmental Quality

The Cumberland Plateau Regional Housing Authority voluntarily agrees to the issuance of this Order.

Date: 8/13/17 By: [Signature] EXECUTIVE DIRECTOR
(Person) (Title)
Cumberland Plateau Regional Housing Authority
KEITH L. VIER

Commonwealth of Virginia

City/County of Russell

The foregoing document was signed and acknowledged before me this 3rd day of

August, 2017, by Keith L. Vier who is

Executive Director of the Cumberland Plateau Regional Housing Authority on

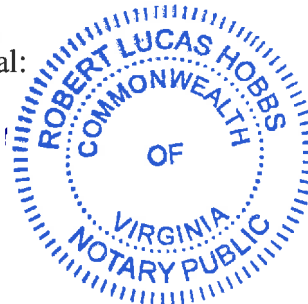
behalf of the Authority.

[Signature]
Notary Public

151699
Registration No.

My commission expires: 3/31/2021

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

In order to comply with the provisions of the State Water Control Law and Regulation and the Permit, as the party covered by the Permit, the Cumberland Plateau Regional Housing Authority agrees to implement the following actions by the dates noted below:

1. Submit a copy of a fully executed, current maintenance contract for the Facility no later than September 1, 2017, and comply with the Permit requirement to keep a maintenance contract in force for the Facility thereafter.
2. Submit semi-annual sampling results (on the Permit DMR) for a period of two years, with sampling results due September 10, 2017, March 10, 2018, September 10, 2018 and March 10, 2019.
3. All reports submitted to the SWRO shall be mailed to the attention of Ruby Scott, Compliance Auditor, 355-A Deadmore Street, Abingdon, VA 24210.